

Rule of law must be upheld

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By **Srinath Fernando**

It is really unfortunate to witness a violent clash of politicians within the same party, in a run up to local government elections.

The conditions of an ideal State have been debated by ancient philosophers Plato and Aristotle almost 2,400 years back. Plato said that "where the law is subject to some other authority and has none of its own, the collapse of the state, is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state.

It has been almost 60 years since we gained independence, the cry for independence was to have a better system of government without colonial masters. It is regrettable to observe the conduct of the law enforcement apparatus in arresting crimes and then suspects held under police custody dies under police supervision. This is an alarming trend and a Commission of Inquiry into the causes of police brutality is urgently needed. It is paramount that an elected government – the Executive - should enforce the law of the land in line with the freedoms guaranteed by the constitutions. Albert Venn Dicey says that all citizens are equal before the law, no one can be punished unless they are in clear breach of the law and that there are no set of laws which are above courts. This is a fundamental legal principle and must be treated with utmost respect.

The constitution is the supreme law of the country which gives an idea as to the nature of the state for which we belong. If the idea is formed by reference to the standards of conduct of law makers in the run up to elections, then the state can be described as one in which there are two types of laws, one for the Legislators and one for the citizens. Why should there be two types of laws? Why should there be arbitrariness in managing the State where State is managed through reference to the powers and functions conferred upon the rulers by the constitution? If the rule of law is not upheld it would lead to anarchy. There have been public display of disgust over police brutality and often military had to be engage to quell the violence. How did Police arrogate to themselves the power of dispensing justice within the police precincts?

People's representatives are elected by the people based on trust reposed on them that they would abide by the standards of conduct befitting the position to which they are elected. It is unfortunate that rule of law seems to have been slid into an abyss.

Legislators are openly resorting to extra judicial actions and there isn't any serious public outcry against such conduct. Now the terrorist threat has significantly been reduced and

it is high time a review is undertaken to reduce the circulation of guns in the society and to assess who would require guns for personal security.

Law makers seem to have derived this stimulus from the society heavily instilled by the sense of euphoria over the war victory brought about by the current regime and the sense of gratitude that is due for the leaders who directed the war victory. A new type of doctrine seems to have been let loose. Basic freedoms of the citizens have been frozen to a certain degree.

This is the beginning of a new political ideology hitherto never heard of or experienced in Sri Lanka. If lawlessness is not arrested it would backfire on government and it is the primary responsibility of the government to ensure that law enforcement apparatus works within the law. If there is no discipline within police and armoured forces it would be a dangerous precedent and would threaten the very foundations of democracy.

If we may go back to 1980s, a peaceful procession was staged by the Lanka Samasamaja Party (LSSP) against the US naval base in Diego Garcia in 1983.

Late Vivien Goonewardena was one of the leaders at the forefront of the protest march, as it approached the US Embassy, she was arrested by the police and was inhumanly treated at the behest of then rulers of the day and she filed a fundamental rights case and the case was upheld by the Supreme Court. The Court held that Police Inspector had exceeded his authority and punished him for the brutal act he committed.

The result was that the Police Inspector was later on promoted instead of a disciplinary action, clear message of countenance of police excesses by the regime then in power.

Then came the stoning of the houses of the Supreme Court Judges and the government response was that mischievous monkeys might have thrown mangoes on the roofs but there were reports/eyewitnesses that the so called 'monkeys' had come by state owned busses.

There were reports that law makers had occupied the seat of the Officer-In-Charge (OIC) of the Police Station when the victim arrived at the Police Station to lodge an entry. To victims utter bewilderment the Police Station had been overpowered by the political influence and his/her case was not entertained. Peoples Alliance (PA) government came into power in 1994 claiming that they would put a stop to all the vicious actions during the UNP's 18 year rule and promised to unleash a new era for Sri Lanka. SLFA led governments have come a full circle.

What measures are needed now to upgrade the State of Sri Lanka into a functioning democracy? The paramount duty of the government is to instil discipline in the law enforcement agencies. Implementation of 17th Amendment would have been a classic exercise in good governance.

A code of conduct for Ministers and legislators is an absolute necessity in view of the recent incidents and to arrest further deterioration of governments standing. Ministers and legislators should be admonished to conduct themselves in line with the expectations of the people. The constitution clearly provides an upper place for Buddhism that patriotic soldiers who sacrificed their lives for the country would find it uncomfortable to rest in peace.

(The writer is a Freelance Journalist and a Political Lobbying and Government Relations Consultant.)

- See more at: <http://www.ft.lk/2011/10/14/rule-of-law-must-be-upheld/#sthash.XqpamFvQ.dpuf>